

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 Before The Honorable Thomas S. Hixson, Magistrate Judge
4
5 EPIC GAMES, INC.,)
6 Plaintiff,)
7 vs.) Case No. C 20-05640-YGR
8 APPLE, INC.,)
9 Defendant.)

10
11 San Francisco, California
12 Friday, January 17, 2025

13 TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND
14 RECORDING 1:01 - 1:14 = 13 MINUTES

15 APPEARANCES:

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1 Friday, January 17, 2025

1:01 p.m.

2 P-R-O-C-E-E-D-I-N-G-S

3 --oOo--

4 THE CLERK: Good afternoon. We are here in civil
5 action 20-5640, Epic Games, Inc., versus Apple, Inc. The
6 Honorable Thomas S. Hixson presiding.

7 Counsel, please state your appearances. Let's start
8 with Plaintiff's counsel.

9 MR. EVEN (via Zoom): Good afternoon. Yonatan
10 Even for Epic Games, your Honor.

11 THE COURT: Good afternoon.

12 MR. PERRY (via Zoom): Good afternoon, your Honor.
13 Mark Perry for Apple.

14 THE COURT: Good afternoon.

15 MR. LO (via Zoom): Good afternoon, your Honor.
16 Jason Lo for Apple.

17 THE COURT: Good afternoon.

18 I've read the parties joint status report. So thank you
19 for that. Let me turn to Epic. Is there anything that you
20 wanted to add to the status report?

21 MR. EVEN: I think the status report lays out the
22 general status. We have learned from the special masters
23 that it's slow going and that, given the numbers that Apple
24 predicted, it's going to take them months, not weeks. We
25 raised it with Judge Gonzalez Rogers who said that she wants

1 a report at the end of the month, and then she may ask Apple
2 to produce the documents to her and spot check them, and she
3 wishes to hear back from us on that and then resume the
4 hearings towards the end of February.

5 We have a couple of things that are not in the report
6 of things that we've been going back and forth with Apple of
7 (sic) a few things that we have -- just documents we haven't
8 received yet. I think we, just today, received the last two
9 documents of the 11 documents that your Honor reviewed in
10 camera on the original motion. For some reason, those took
11 a long time.

12 Apple informed us that a few other documents that we
13 were supposed to get, we didn't get for some reason, or there
14 was some issues with the production, and those, I am told,
15 are forthcoming on Monday. And, other than that, your Honor
16 has Apple's objection and we are still going through this
17 week's report from the special masters and deciding whether
18 we have anything to object for next week.

19 THE COURT: All right, thank you. And let me turn
20 to Apple. Is there anything that you would like to add to
21 the status report?

22 MR. PERRY: Only to confirm, your Honor, that we
23 have completed the re-review of the documents. At this
24 time, we are doing a final (indiscernible) to resolve some
25 coding conflicts and so forth, but the documents have all

1 been re-reviewed, as the Court requested, and they will all
2 be produced to Epic and/or the special Masters by January
3 21st, the remaining documents, as Judge Gonzalez Rogers
4 requested.

5 THE COURT: I see. Thank you. Are you able to
6 estimate for me the total number of -- as of the 21st, the
7 total number of documents that will be in the hands of the
8 special masters that they have not yet ruled on?

9 MR. PERRY: Your Honor, they are all estimates, as
10 I've said. Each time -- the numbers change, literally by the
11 day. We'll have final numbers on Monday, but here are the
12 numbers in estimate.

13 The re-review is approximately 54,000 documents in
14 total. We have downgraded approximately 30,000 of those.
15 We are maintaining privilege, in whole or in part, over
16 approximately 24,000 of those. 10,000 have been produced to
17 the special masters for review already. And the -- that
18 leaves 13 to 14,000, depending on where the numbers actually
19 come out, on -- for the final delivery to the special
20 masters.

21 THE COURT: And that final delivery will happen
22 the 21st, is that correct?

23 MR. PERRY: Correct, your Honor.

24 THE COURT: I see. Thank you. And then your --
25 the parties joint status report to Judge Gonzalez Rogers is

1 due by noon on January 31st, is that correct?

2 MR. PERRY: That is correct, your Honor.

3 THE COURT: All right. Let me turn to Epic. Do
4 you think it's necessary for me to set a further status
5 conference with the parties or -- that may be informed by
6 your discussions at the status conference with Judge
7 Gonzalez Rogers?

8 MR. EVEN: So, I don't think we actually have a
9 status conference with Judge Gonzalez Rogers on the
10 schedule, and so therefore I do think that it would be
11 helpful to schedule another one with your Honor. I am,
12 frankly, surprised and concerned about the numbers we just
13 heard.

14 We -- on January 13th, Apple estimated that it's going
15 to have about 17,000 documents going to the special masters
16 overall. At the time they said they had 9,000 documents
17 left to review. By the -- by the June status report that
18 number climbed, within literally a day and a half from 17 to
19 20, and now we hear that it's climbed from 20 to 24, all in
20 the span of four days. I -- I frankly just don't understand
21 how that happens. We'll have to wait and see, but I am
22 deeply concerned, because that would now mean that, within
23 the span of four days, based on what the special masters
24 have told us, and immediately after they told us this, Apple
25 added seven weeks of review to the special masters where

1 they are going to actually get through the review. So, we're
2 -- I'm very concerned about that. I'll have to take that back
3 and think about it some more, but it's hardly giving me
4 comfort that this is continuing at the same level of re-
5 view that Apple has employed at the beginning of the
6 process. It somehow went down from 87-percent of --
7 downgrading to, apparently withholding 7,000 out of 9,000.
8 I'm not sure how that happened, given the representations
9 that the documents were randomly selected.

10 But, I really -- I do think that following the 31st
11 report to Judge Gonzalez Rogers, it would be helpful to meet
12 again with your Honor.

13 THE COURT: And what are Apple's thoughts on a
14 further status conference?

15 MR. PERRY: We -- we would be delighted to meet
16 with your Honor. I do agree that after the 31st report
17 would probably be the most efficient, given that we would
18 have that report to go with the time, perhaps the following
19 week.

20 I'm happy to respond to Mr. Even's comments about the
21 review, if the Court's interested, but otherwise I will -

22 THE COURT: If you would like to, you may do so.

23 MR. PERRY: Your Honor, I have tried to be very
24 clear at every one of these hearings that the numbers that
25 we provide are estimates, because each -- the documents are

1 being batched out and we get interim results as they go and
2 we don't know what the final number is going to be until the
3 end. And the first batch goes, and the second batch goes,
4 and the third batch goes and so forth, and they have changed
5 every time. I agree with Mr. Even. But that's simply
6 because as the review goes on, we have more and more
7 documents in and the numbers add up. And we have got to the
8 end now, and what I -- the numbers I just gave the Court and
9 Mr. Even, they are not quite finalized, because we have to
10 resolve some coding conflicts and there will be a few more.
11 We will know the final numbers next week.

12 I mean, I don't know any way to say it more clearly than
13 we have provided good-faith estimates throughout, based on
14 the existing pace of the review. Epic asked for, the
15 protocol calls for, weekly productions. The numbers have
16 been accurate each week, but each week has been a different
17 batch and a different set of results that will all be
18 abrogated at the end. It's simply a matter of the nature of
19 the review. It has nothing to do with the methodology or
20 the nature of the document.

21 THE COURT: All right, thank you.

22 Both sides appear to agree that we should have another
23 status conference after the January 31st update is provided.
24 Let me turn to Epic. When would you recommend?

25 MR. EVEN: I would recommend the same time on the

1 31st. The report is to be provided to Judge Gonzalez Rogers
2 at noon on the 31st. We can meet with your Honor at 1:00
3 when we'll have the numbers.

4 THE COURT: And, what does Apple think?

5 MR. PERRY: That's fine with Apple, your Honor.
6 The only difficulty I foresee is, the joint status report to
7 your Honor, the numbers may not be final -- you know, if we
8 -- we typically have them due the day before. You know, we
9 could use the -- Judge Gonzalez Rogers' report as our status
10 -- I just don't want to have this problem of two conflicting
11 numbers and trying to do two things, you know, with -- at
12 different times. I just raised that as a logistical issue.

13 THE COURT: Understood. My understanding is that
14 the report to Judge Gonzalez Rogers on the 31st will be
15 directed to the special masters progress. Is that correct?

16 MR. PERRY: That's correct, your Honor. She asked
17 us to report on the progress to that date of the special
18 masters' review of the documents delivered to them.

19 THE COURT: And -- Epic is nodding in agreement.

20 MR. EVEN: Yes. It's just about that. Apple's
21 numbers should be finalized well before that, but if your
22 Honor prefers, we can obviously push the -- the final
23 meeting with your Honor, or the next meeting with your
24 Honor, to a few days after on February 3rd of whatever is
25 the following Monday.

1 THE COURT: I'm fine having a status conference on
2 January 31st at 1:00 p.m. Apple has raised the question of
3 whether there would be two different status reports. I
4 would like a status report on January 30th, but I think to
5 avoid duplication, the parties should exclude the material
6 you're going to include in the January 31st report. But, in
7 front of me you've raised many other issues, not just the
8 progress of the special masters. So I think on the status
9 report that's due on January 30th, you should discuss any
10 other issues that need to be discussed, aside from the
11 progress of the special masters, and then when you file your
12 report on January 31st, that will discuss the special
13 masters. Does that -

14 MR. PERRY: Very well, your Honor.

15 THE COURT: Yes?

16 MR. PERRY: Yes, your Honor.

17 THE COURT: Okay.

18 MR. EVEN: That is fine.

19 THE COURT: Okay. Then I'm going to schedule
20 another status conference for 1:00 p.m. Pacific Time for
21 January 31st. The parties joint status report, concerning
22 the status of discovery, will be due on January 30th, and
23 then Judge Gonzalez Rogers has previously given you a
24 deadline of -- for January 31st for the status report, as to
25 the special masters progress.

1 Is there anything else that Epic wanted to discuss at
2 the status conference today?

3 MR. EVEN: Not at this time, your Honor.

4 THE COURT: Is there anything else that Apple
5 would like to discuss at the status conference today?

6 MR. PERRY: Not today, your Honor. Thank you.

7 THE COURT: All right. Thank you, Counsel. The
8 matter is submitted.

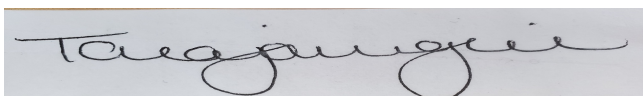
9 MR. EVEN: Thank you.

10 (Proceedings adjourned at 1:14 p.m.)
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CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages of the official electronic sound recording provided to me by the U.S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.

A handwritten signature in cursive script, appearing to read "Tara Jungi", is centered on a light gray rectangular background.

Echo Reporting, Inc., Transcriber

Tuesday, January 21, 2025